

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
EASTERN DIVISION

ROBERT T. LAND, JR AND
ERIN LAND

PLAINTIFFS

v.

CIVIL ACTION NO. 1:08cv012-M-D

AGCO CORPORATION, FORMERLY
KNOWN AS MASSEY-FERGUSON, INC.,
AND MASSEY-FERGUSON INDUSTRIES,
LOVORN TRACTOR COMPANY;
AND JOHN DOES 1-5

DEFENDANTS

AGCO CORPORATION

THIRD-PARTY PLAINTIFF

VS.

TAYLOR-PITTSBURGH/KING KUTTER
AND JOHN DOES 1-5

THIRD-PARTY DEFENDANTS

FIRST AMENDED THIRD-PARTY COMPLAINT

COMES NOW AGCO Corporation (“AGCO”), through the undersigned counsel, and after having been granted leave of this Court, files its First Amended Third-Party Complaint against Taylor-Pittsburgh/King Kutter, as follows:

1. Third-Party Plaintiff AGCO is a corporation organized and existing under the laws of the State of Delaware and doing business in the State of Mississippi.
2. Taylor-Pittsburgh/King Kutter, is a foreign company doing business in the State of Mississippi and may be served with process by serving its agent for service of process Phillip Fraley, 305 Commerce Drive, Winfield, AL 35594.
3. John Does 1-5 are any predecessors in interest, parent corporations of Taylor-Pittsburgh/King Kutter or others who may have any liability to plaintiff or Third-Party Plaintiff.

4. Plaintiffs have sued AGCO for personal injuries to Robert T. Land, Jr. alleging that a rotary cutter manufactured by AGCO was unsafe for its intended use and was in an unreasonably dangerous condition because the stump jumper and blades detached and struck Robert T. Land, Jr. Plaintiffs' Complaint is attached hereto as Exhibit 1.

5. AGCO did not manufacture the rotary cutter. Taylor-Pittsburgh/King Cutter manufactured and supplied the rotary cutter to AGCO. AGCO entered into a Products Supply Agreement for Manufacture and Sale of Farm Equipment (Supply Agreement) with Taylor-Pittsburgh, a copy of which is attached as Exhibit 2. Taylor-Pittsburgh/King Cutter, pursuant to the Supply Agreement Section L 12.10, agreed to "defend, indemnify and hold harmless AGCO ...from and against any and all claims, demands, actions, losses and expenses (including reasonable attorney's fees)...where it is alleged or determined that bodily or personal injury...was caused by a defect in design, material, manufacture or workmanship of the Product or Part or portion of the Product or Part supplied by Taylor/Pittsburgh under this Agreement or by inadequate warnings or instructions with respect to such Products or Parts..."

6. AGCO has tendered the defense of the case to Taylor-Pittsburgh/King Cutter and demanded indemnity.

7. Plaintiffs have alleged in their Complaint that the rotary cutter and components were defective, unreasonably dangerous and contained inadequate instructions and warnings. While denying that it has any liability in the premises, AGCO's potential liability is premised upon the acts or omissions or defective product of Taylor-Pittsburgh/King Cutter.

8. While expressly denying any liability to the plaintiffs, AGCO would show that if judgment is entered against it, it is entitled to indemnification from Third-Party Defendant Taylor-

Pittsburgh/King Kutter under the terms of the Supply Agreement and under common law theories of indemnity because any liability of AGCO to the plaintiffs, which is expressly denied, may be due to the acts or omissions or defective product of Taylor-Pittsburgh/King Kutter.

9. AGCO is entitled to be defended and indemnified by Taylor-Pittsburgh/King Kutter in this lawsuit.

WHEREFORE, PREMISES CONSIDERED, AGCO Corporation demands that it be provided a defense by Taylor-Pittsburgh/King Kutter and that it be indemnified by Taylor-Pittsburgh/King Kutter from any judgment entered against it in favor of plaintiffs and for all incidental damages arising from the defense of the lawsuit, including all expenses and attorney's fees.

Respectfully submitted,

AGCO CORPORATION, FORMERLY
KNOWN AS MASSEY-FERGUSON, INC.
AND MASSEY-FERGUSON INDUSTRIES

BY: /s/ Robert F. Stacy, Jr.
OF COUNSEL

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CERTIFICATE OF SERVICE

I hereby certify that on November 17, 2008, I electronically filed the foregoing document with the Clerk of the Court using the ECF system which sent notification of such filing to counsel who have electronically registered with the Court, and I hereby certify that I have mailed by United States Postal Service the document to the non-ECF participants. The following is a list of all counsel of record or parties regardless whether electronically notified by the Court or sent via United States Postal Service by this firm:

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